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AMER RECORDS AND BRIEFS

Supreme Court, U.S.
FILED
07-875 NOV 23 2007
OFFICE OF THE CLERK

(2)

APPENDIX

In The
SUPREME COURT OF THE UNITED STATES
December term, 2007

KIRK AND SUSAN WHITCOMBE
Husband and wife
Petitioners'
v.
LARRY AND SUSAN HENAK
Husband and wife
Respondent's

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

Kirk and Susan Whitcombe
Pro- Se's
3320 W Paradise Dr.
Phoenix, AZ 85029
Telephone (602) 993-1326

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IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT COURT OF ARIZONA

Kirk & Susan Whitcombe, Husband and Wife,	) No. CV 06-0374-PHX-ROS
	) **ORDER**
Plaintiffs,	)
	)
Larry Henak and Susan Henak, Husband and Wife	)
	)
Defendants.	)
	)

Pending is Plaintiffs' Motion For Reconsideration (Doc. # 1) . Plaintiff's Motion is 77 pages long, excluding exhibits, and far exceeds the seventeen page limit permitted under Local Rule 7.2(e) . The court is permitted to dispose of a motion summarily for non-compliance pursuant to sections (i), which provides that "[i]f a motion does not conform in all substantial respects with the requirements of this Local Rule .... Such non-compliance may be deemed a consent to the denial of granting of the motion and the Court may dispose of the motion summarily." This Court has previously stated that although it will construe a pro-se parties' pleadings liberally, such a party is bound to follow the procedural rules applicable to all litigants, represented or not. See Green v Dorrell, 969 F .2d 915, 917 (10th Cir. 1992). '[P]ro se litigants in the ordinary civil case should not be treated more favorably than parties with attorneys of record." Jacobsen v. Filler, 790 F.2d 1362, 1364 (9th Cir. 1986). Because Plaintiff did not adhere to the proper procedural rules, the submission

must be stricken.

The Court will permit Plaintiffs to refile their motion in accordance with local and federal rules. The Court notes that several of the judgments for which Plaintiff's seek reconsideration were issued several years ago in other jurisdictions. Plaintiffs are reminded that although Rule 60 provides for an independent action to relieve a party from a judgment, order, or proceeding, it requires that the motion be made "within a reasonable time, and for reasons (1) mistake, inadvertence, neglect]. (2) [newly discovered evidence], and (3) [fraud] not more than one year after the judgment, order, or proceeding was entered or taken.

DATED this 21st day of February, 2006

"s/_____"
Roslyn O. Silver
United States District Judge

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT COURT OF ARIZONA

Kirk & Susan Whitcombe, Husband and Wife,	) No. CV 06-0374-PHX-ROS
	) **ORDER**
Plaintiffs,	)
	)
Larry Henak and Susan Henak, Husband and Wife	)
	)
Defendants.	)
	)

Pending is Plaintiff's Motion for Reconsideration (Doc. #10) filed on February 28, 2006. Plaintiffs seek reconsideration of the Court's Order of February 21, 206 (Doc. #4), in which it ordered Plaintiff's previous Motion for Reconsideration stricken because at seventy-seven pages long, it far exceeds the seventeen page limit permitted under the local rules. Plaintiffs argue that the Court erred, because pages ten through seventy-seven contain a "statement of facts" that are excluded by Local Rule 7.2(de), which provides that "a motion including its supporting memorandum…shall not exceed seventeen pages, exclusive of attachments and *any required statement of facts* …." (emphasis added). As the language suggests, this rule only excludes *required* statement of facts, such as those submitted with a motion for summary judgment pursuant to Local Rule 56.1. It does not exclude a sixty- seven page section of a motion that a party chooses to call a *statement of facts* in order to circumvent the page limit. Plaintiffs' Motion will be denied.

Accordingiy,

IT IS HEREBY ORDERED that Plaintiff's Motion for Reconsideration (Doc.#10) is DENIED.

DATED this 20th day of March, 2006.

"s/_____"
Roslyn O Silvet
United States District Judge

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT COURT OF ARIZONA

Kirk & Susan Whitcombe, Husband and Wife,	) No. CV 06-0374-PHX-ROS
	) **ORDER**
Plaintiffs,	)
	)
Larry Henak and Susan Henak, Husband and Wife	)
	)
Defendants.	)
	)

On February 1, 2006, Plaintiffs brought this independent action pursuant to Fed. R. Civ. P. 60(b) seeking to set aside three orders rendered by the King County, Washington Superior Court in Henak v. Whitcombe, et al., No. 95-2-2783-1 (Wash. Super. Ct. 1996), one order rendered by Okanagan County, Washington Superior Court in Whitcombe v. Twiss, et al., No. 01-2-00065-1 (Wash. Super. Ct. 2002), and on order rendered by the Washington State Court of Appeals in Whitcombe v. Kitz, et al., No. 52005-9-I, consolidated with No. 52170-5-I (Wash. Ct. App. 2004).[1]

[1] The saving clause of Fed. R. Civ. P. 60(b) provides that the rule "does not limit the power of a court to entertain an independent action to relieve a party from a judgment, order, or proceeding." Wright, Miller & Kane, Federal Practice and Procedure: civil 2d § 2868. This is not an affirmative grant of power, but merely allows the "continuation of whatever power the court would have had to entertain an independent action if the rule had not been adopted." Treadaway v. Academy of Motion Picture Arts and sciences, 783

See Exhibits 18, 31, 62, 57, 67 to Plaintiffs' Motion For Relief From Judgment (Doc. #4). On February 22, 2006, the court ordered the filling stricken pursuant to Local Rule 7.2(e) for exceeding the page limit, but permitted Plaintiffs to refile the motion in accordance with local and federal rules (Doc. #4). Plaintiffs have yet to file a new motion. Because the initial Motion is no longer part of the record, and Plaintiffs have failed to file an amended motion in compliance with the Court's Order, this action has not been legally commenced pursuant to the Federal Rules of Civil Procedure.

Moreover, this Court lacks jurisdiction to set aside state court judgments. Although Fed. R. Civ. P. 60(b) permit's a court other than the one that issued the judgment to provide relief, it is not a n affirmative grant

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F.2d 1418, 1420 (9th Cir. 1986). The exercise of this power has historically been exercised "only under unusual and exceptional circumstances." Id. These principles have been explicitly recognized by this Circuit. See id. citing Lapin v. Shulton, 33 F.2d 169 (9th Cir. 1964) (affirming lower court's holding that "considerations of comity and orderly administration of justice demanded that the none rendering court should be decline jurisdiction of such an action and remand the parties for their relief to the rendering court, so long as it is apparent that a remedy is available there).

of power and merely allows "the continuation of power the court would have had to entertain an independent action." Treadaway v. Acad. Of Motion Picture Arts and Sciences, 783 F.2d 1418, 1420 (9th Cir. 1986). It is well established that federal courts cannot enjoin the enforcement of state judgments. See Atl. Coast Line R.R Co. V. Bhd. Of Locomotive Eg'r, 398 U.S. 281 (1970); 28 U.S.C § 2284; Furnish v. Bd. Of Med. Exam'rs, 257 F.2d 520 (9th Cir. 1958). All of the judgments Plaintiffs seek to set aside are state court judgments over which this Court lacks jurisdiction. As a result, the action must be dismissed.

Accordingly,

IT IS HEREBY ORDERED that this action shall be DISMISSED.

DATED this 12th day of April, 2006.

"s/_____"
Roslyn O. Silver
United States District Judge

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT COURT OF ARIZONA

Kirk & Susan Whitcombe, Husband and Wife,	) No. CV 06-374-PHX-ROS
	) **JUDGMENT**
Plaintiffs,	)
V.	)
Larry Henak and Susan Henak, Husband and Wife	)
	)
Defendants.	)

___ **Jury Verdict.** This action came before the Court for trial by jury. The issues have been tried and the jury has rendered its verdict.

_X_ **Decision by Court.** This action came for consideration before the Court. The issues have been considered and the decision has been rendered.

IT IS HEREBY ORDERED that this action shall be dismissed.

April 12,2006

RICHARD H. WEARE
Clerk/ DCE

s/ Tammy Johnson
(By) Deputy Clerk

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT COURT OF ARIZONA

Kirk & Susan Whitcombe, Husband and Wife,	) No. CV 06-0374-PHX-ROS
	) **ORDER**
Plaintiffs,	)
	)
Larry Henak and Susan Henak, Husband and Wife	)
	)
Defendants.	)
	)

Pending are Plaintiffs' Motion For Relief From Judgment (Doc. #17), Motion For Reconsideration (Doc. #18), and Motion to Refile CR 60 Motion (Doc. #20). For the Reasons set forth below, these Motions will be denied.

I. Background

This action arises out of a boundary dispute between Plaintiffs and their neighbors, Larry and Susan Henak. In 1995, the Henaks file a trespass damages action against the Whitcombes, in which the Henaks prevailed. Henak v. Whitcombe, et al., No. 95-2-02783-1 (Wash. Super. Ct. 1996) (Exs. #17, 18 to Plaintiffs' Motion For Relief From Judgment, Doc. #17). The Whitcombes appealed, and the Washington Court of Appeals affirmed on April 27,1998. Henak v. Whitcombe, et al., No. 39547-5-1 (Wash. Ct. App. 1998) (Ex.#22 to Plaintiffs' Motion for Relief From Judgment, Doc. #17). Plaintiffs then filed a Motion to Vacate the Judgment on February

22, 1999 based upon information obtained question the method used by the Henaks' surveyor, Mr. Kitz, whose survey the Superior Court relied upon in finding the Henaks' in favor. Henak v. Whitcombe, et al., No. 95-2-02783-1 (Wash. Super. Ct. 1996)(Ex. #28) to Plaintiff's Motion For Relief From Judgment, Doc. #17). The trial court denied the motion on the grounds that it had been affirmed by the Court of Appeals and was res ajudicate. Id.)Exh. #31 to Plaintiffs' Motion For Relief From Judgment, Doc. #17). On August 23, 2002 Plaintiffs again moved to vacate the judgment, which the trail court denied on January 3, 2003 for the same reasons. Id. (Exh. #67 to Plaintiffs' Motion For Relief From Judgment, Doc. #17). The Court of Appeals affirmed the trial court's finding. Whitcombe v. Kitz, et al., No. 52005-9-I, consolidated with No. 52170-5-I (Wash. Ct. App. 20041) (Ex. #75 to Plaintiffs' Motion To Vacate Judgment, Doc. #17).

In another cause of action, Plaintiffs filed suit against the Washington State Board of Registration for Professional Engineers and Land Surveyors for its failure to censure Mr. Kitz on February 13,2001. Whitcombe v. Twiss, et al., CV 01-200065-1 (Wash. Super. Ct. 2001) (Ex. #42 to Plaintiffs' Motion To Vacate Judgment, Doc. #17). The lawsuit was dismissed on December 1, 2002, and the Court of Appeals affirmed in an unpublished opinion. Whitcombe v. Twiss, et al., No. 21637-3-III (Wash Ct. App. 2005) (Ex. #80 to Plaintiffs' Motion to Vacate Judgment, Doc #17).

In separate cause of action, the Whitcombes brought suit against Mr. Kitz for fraud, violation of survey recording laws, and negligence in surveying based on the survey he recorded on May 12, 1995. The

uit was filed on January 15,2002, and the
hington Court of Appeals affirmed on May 10, 2004.
tcombe v. Kitz, et al., No. 52005-9-I, consolidated
No. 52170-5-I (Wash. Ct. App. 2004) (Ex. #75 to
ntiffs' Motion To Vacate Judgment, Doc #17). The
eme Court of Washington also affirmed.
tcombe v. Kitz, et al., C/A No. 52005-9-I (Wash.
) (Ex. #82 to Plaintiffs' Motion To Vacate, Doc. #17).

February 1, 2006 Plaintiffs brought this independent
n pursuant to Fed. R. Civ. P. 60 (b) [1] seeking to set
e three orders rendered by the King County,
hington Superior Court in Henak v Whitcombe, et
No. 95-2-02783-1 (Wash. Super. Ct. 1996), which was
riginal trespass suit; one order rendered by
nogan County, Washington Superior Court in
tcombe v Twiss, et al., No. 01-2-00065-1 (Wash.
r. Ct. 2002), which suit was brought against the
hington State Board of Registration for Professional
neers and Land Surveyors; and one order rendered
e Washington State Court of Appeals in Whitcombe
tz, et al., No. 52005-9-1, consolidated with No.
0-5-1 (Wash. Ct. App. 2004), which is the Order
ning the trial courts' denial of the Second Motion
acate Judgment in the original trespass action, and
rial court's dismissal of the Whitcombes' claim
nst Henaks' surveyor, Mr. Kitz, for being time
ed (Doc. # 3, stricken).

February 22, 2006, the Court ordered the filing
ken pursuant to Local Rule 7.2(e) for exceeding the

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ts Dismissal Order of April 12, 2006, the Court set forth the
grounds upon which an independent action pursuant to Fed.
. P. 60(b) may lie and incorporates it herein.

page limit, but permitted Plaintiffs to refile the motion in accordance with local and federal rules (Doc. #4). On April 12, 2006 this Court dismissed the action based upon Plaintiff's failure to amend in compliance with its previous Order, and also because the Court lacks jurisdiction to grant the relief requested (Doc. #15). The next day, the Clerk entered the Plaintiff's Amended Rule 60 (b) Motion (Doc. # 17).

On April 20, 2006 Plaintiffs filed a Motion For Reconsideration (Doc. # 18), and on April 26, 2006 they filed a Motion To Refile CR60 Motion (Doc. #20).[2] For the reasons set forth in the Dismissal Order, this Action has not been legally commenced, thus no party has responded to the Motions.

11. **Motion for Reconsideration**

The Court has discretion to reconsider and vacate its orders. See Barber v. Hawaii, 42 F. 3d 1185, 1198 (9th Cir. 1994); United States v Nutri-Cology, Inc., 982 F. 2d 394, 396 (9th Cir. 1992.) Motions for reconsideration are distavored, however, and are not the place for parties to make new arguments not raised in their original briefs. See Northwest Acceptance Corp. v. Lynnwood Equip., Inc., 841 F.2d 918, 925-26 (9th Cir. 1988). Nor is it the time to ask the court to rethink what is has already thought.

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[2] Plaintiffs repeatedly cite to "CR60" as the basis for their motion. After reviewing the Attachments to the Motion, it appears that his short-cite refers to the Washington State Court Rule of Civil Procedure, which is inapplicable in federal court. Nonetheless, given the Plaintiffs' pro se status and the similarity of the Superior Court rule and corresponding federal rules, the Court will construe the Motion as being brought pursuant to Rule 60 of the Federal Rules of Civil Procedure.

See United States v. Rezzonico, 32 F. Supp. 2d 1112, 1116 (D. Ariz. 1998).

A Rule 60 motion for relief from an order may be granted only "upon a showing of (1) mistake, surprise, or excusable neglect; (2) newly discovered evidence; (3) fraud; (4) a void judgment; (5) a satisfied or discharged judgment; or (6) extraordinary circumstances which would justify relief." School Dist. No. 1J Multnomah County, Or, v. AcandS, Inc., 5 F.3d 1255, 1263 (9th Cir. 1993); Fed. R. Civ. P. 60 (b); Allmerica Fin. Life Ins. & Annuit Co. v. Llewellyn, 139 F. 3d 664, 666 (9th Cir. 1997) (stating that party must show "extraordinary circumstances" to obtain relief under Rule 60 (b) (6)).

Plaintiffs contend that the Court erred finding that it lacks jurisdiction because the state court judgments it seeks to enjoin were procured by fraud, and that as a result, this Court does in fact have jurisdiction, citing Long v Shorebank Development Corporation, 182 F.3d 548, 554 (7th Cir. 1999). Although Seventh Circuit law is not binding upon this Court, the premise for which Long is cited is well-settled law. Under the *Rooker-Feldman* doctrine, lower federal courts do not have subject matter jurisdiction over claims seeking review of state court judgments. Rooker v Fidelity Trust Co., 263 U.S. 414, 415-16 (1923). Thus, a party seeking review of a state court judgment must seek relief through the state court system and ultimately the Supreme Court. The federal court has no jurisdiction if consideration would require review of the allegations underlying the state judicial decision. See Robinson v. Ariyoshi, 753 F.2d 1468, 1471-72 (9th Cir. 1985), *vacated on other grounds*, 477 U.S. 902 (1986) This doctrine applies even when the challenge to the state court decision involves federal constitutional

issues. See Feldman, 460 U.S. at 484-86.

Plaintiffs contend that under Long, federal courts have jurisdiction over a "federal claim alleging a prior injury caused by a state court judgment," but not "a federal claim alleging injury caused by a state court judgment," and that because their claim falls in the former category, this court has jurisdiction. Plaintiffs mischaracterize the nature of the relief sought. Plaintiffs' claim that the judgments procured are fraudulent rests upon its allegation that the Kitz survey upon which the district court relied in the original trespass action was faulty. This argument has been raised repeatedly in the original trespass action through Motions To Vacate The Judgment, and also in the actions Whitcombes brought against Kitz and the State Board of Registration for Professional Engineers and Land Surveyors, and has been rejected in every instance. Even if this Court found the state court judgments were incorrect, it would still not have jurisdiction. See Long, 182 F.3d at 556. Thus, Plaintiffs' action is the very category from which it seeks to be distinguished in that it "alleges injury caused by a state court judgment." Because Plaintiff's raise no new grounds warranting relief pursuant to Rule 60, the Court will deny the Motion.

III. Amended Rule 60 Motion

As previously set forth, Plaintiffs Amended Motion (Doc.#17) was not considered in the Dismissal Order. It is of no consequence, however, as it seeks the same relief over which the Court lacks jurisdiction. For reasons set forth in the Dismissal Order and above, the Motion will be denied.

Motion To Refile Rule 60 Motion

Plaintiffs seek to refile their Rule 60 Motion on
nds that the Court should not have stricken the first
on or dismissed the action. Plaintiffs contend that
te the Court's allegation in the Dismissal Order,
file an Amended Motion. As the Court previously
ined, due to the simultaneous filing of the
nded Motion and the Court's Dismissal Order, the
nded Motion was not considered. Even if the
nded Motion had been considered, however, the
t would still have dismissed the action because it
the same relief as in the original Motion, which the
t is unable to grant for lack of jurisdiction. For
reasons, the Motion will be denied.

rdingly,

IS HEREBY ORDERED that Plaintiffs' Amended
on For Relief From Judgment (Doc. # 17), Motion
econsideration (Doc. #18), and Motion To Refile
60 Motion (Doc.#20) are denied.

ATED this 28 day of June, 2006.

s/ _____
Roslyn O. Silver
United States District Judge

FILED
SEP 29 2006
Cathy A. Catterson, Clerk
U.S. Court Of Appeals

JUDICIAL COUNCIL

FOR THE NINTH CIRCUIT

In re Charge of	)	
	)	No. 06-89062
Judicial Misconduct	)	ORDER AND
	)	MEMORANDUM

Before: SCHROEDER, Chief Judge

A complaint of misconduct has been filed against two district judges of this circuit. Administrative consideration of such complaints is governed by the Rules of the Judicial Council of the Ninth Circuit Governing Complaints of Judicial Misconduct of Disability (Misconduct Rules), issued pursuant to the Judicial Councils Reform and Judicial Conduct and Disability Act of 1980. 28 U.S.C. ** 351-364.

Complainants, pro-se litigants, allege that the district judges assigned to their case violated a "mandatory nondiscretionary duty" to vacate an allegedly void state court judgment. The judge denied their motions under Federal Rules of Civil Procedure 60 (b) and dismissed the action. Complainants contend that the chief district court judge ignored their requests that he intervene and require the first judge to fulfill her "duty." They also claim that the assigned Judge delayed in ruling on their motions and that their case was on file for four months with no relief. Complainants' exhibits and the case

cket sheet have been carefully reviewed.

This complaint relates to the assigned judge's rulings d decisions in complainants' case, and to the chief strict judge's failure to intervene. A complaint will be smissed if it is directly related to the merits of a dge's ruling or decision in the underlining case. 28 S.C.* 352(b) (1) (A) (ii) ; Misconduct Rule 4 (c) (1). A allenge to a judge's rulings should be sought through e correct review procedure and not through the ocedures of judicial misconduct. See In re Charge of dicial Misconduct, 685 F. 2d 1226, 1227 (9th Cir. Jud. ouncil 1982) (If complaint wants to challenge the dge's rulings, correct review procedure, "not the ocedures for judicial misconduct, [is] the proper medy.") Only a court has the power to change a cision or ruling. The Judicial council, the body that kes action under the misconduct complaint procedure, es not have that authority. Complainants have filed appeal. Charges related to the judges' rulings and cisions are, therefore, dismissed.

urthermore, complainants cannot challenge alleged lay under the misconduct procedures unless the rcumstances are extraordinary, as "where the delay is bitual, is improperly motivated or is the product of proper animus or prejudice toward a particular igant, or possibly, where the delay is of such an traordinary or egregious character as to constitute a ear dereliction of judicial responsibilities." ommentary on Misconduct Rule 1. Such is not the se here.

COMPLAINT DISMISSED.

s/ _____

Chief Judge

FILED
OCT. 19 2006
Cathy A. Catterson, Clerk
U.S. Court of Appeals

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

In re: KIRK L. WHITCOMBE In re: SUSAN L. WHITCOMBE Petitioners,	No. 06-73746 D.C. No CV-06-00374-ROS
KIRK L. WHITCOMBE; et al., Petitioners, v. UNITED STATES DISTRICT COURT FOR THE DISTRICT OF ARIZONA, Respondent, LARRY HENAK; et al., Real Parties in Interest.	ORDER

Before: TASHIMA, W. FLETCHER and BERZON, Circuit Judges.

Petitioner has not demonstrated that this case

rrants the intervention of this court by means of the
raordinary remedy of mandamus. *See Bauman v.*
ited States District Court, 557 F.2d 650 (9th Cir. 1977).
cordingly, the petition is denied.

lo motions for reconsideration, modification, or
rification of this order shall be filed or entertained.

WO

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT COURT OF ARIZONA

Kirk & Susan Whitcombe, Husband and Wife,	) No. CV 06-0374-PHX-ROS
	) ORDER
Plaintiffs,	)
	)
Larry Henak and Susan Henak, Husband and Wife	)
	)
Defendants.	)

Pending before the Court is Plaintiffs Motion to Vacate (Doc.# 28). For the following reasons, this motion will be denied.

A *pro se* litigant "must follow the same rules of procedure that govern other litigants." King v Atiye, 814 F.3d 565, 567 (9th Cir. 1987). The Court has already entered a judgment of dismissal of Plaintiff's action, denied his motion for reconsideration, and denied his petition for mandamus. The Ninth Circuit Stated that "[n]o motions for reconsideration, modification, or clarification of this order shall be filed or entertained."

Plaintiff no files this Motion to Vacate under Rule 60(b) arguing "mistake, inadvertence, excusable neglect, newly discovered evidence, and fraud upon the court." The Court has already ruled on Plaintiff's Rule 60 motion, finding his claims meritless. The Court will not entertain another Rule 60 (b) motion based upon the

e claims.

e Court will not sanction Plaintiff at this time but
ns Plaintiff that no further motions shall be filed.
Court has already entertained Plaintiffs motion for
nsideration and the Ninth Circuit has denied his
eal. This case is closed. Sanctions will be imposed if
ntiff files any additional motions.

ccordingly,

T **IS ORDERED** that Plaintiffs Motion to Vacate
. 28) is **DENIED.**

DATED this 4th day of December, 2006.

s/ _____
Roslyn O. Silver
United States District Judge

FILED
JAN 18 2007
Cathy A. Catterson, Clerk
U.S. COURT OF APPEALS

JUDICIAL COUNCIL

OF THE NINTH CIRCUIT

IN RE COMPLAINT OF	No. 06-89062
	ORDER
JUDICIAL MISCONDUCT	

Before: KOZINSKI, THOMPSON, GRABER, WARDLAW and BERZON, Circuit Judges, and BREYER, HATTER, MOLLOY and WINMILL District Judges.*

Pursuant to Chapter III of the Rules of the Judicial Council Governing Complaints of Judicial Misconduct or Disability under 28 U.S.C. * 352(c), complainant has filed a petition for review of the order of the Chief Judge entered on September 29, 2006, dismissing the complaint against two distrtict judges.

We have carefully reviewed the record and the authorities cited by the Chief Judge in her order of dismissal. We find no basis for overturning the order of dismissal.

For the reasons stated by the Chief Judges and based upon the controlling authority cited in support thereif,

e affirm.

Hon. Roger G. Strand did not participate in the
nsideration of this matter.

FILED
JAN 26 2007
Cathy A. Catterson, Clerk
U.S.COURT OF APPEALS

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

KIRK L. WHITCOMBE; et al,	No. 06-16488
Plaintiffs-Appellants,	D.C. No. CV-06-0374-ROS
v.	District of Arizona Phoenix
LARRY HENAK, Husband; et al,	
Defendants - Appellees.	ORDER

Appellants' "motion for court to resume appeal" received on December 12, 2006, is construed as an amended notice of appeal from the district court's December 4, 2006 order4. Appellants may file a supplemental opening brief no later than February 28, 2007. This case will be ready for calendaring upon receipt of the supplemental opening brief or upon the expiration of time to file the supplemental opening brief.

For the Court

s/ _____
Allison Taylor
Motions Attorney/Deputy Clerk
9th Cit. R. 27-7
General Orders/Appendix A

FILED
JULY 16, 2007
Cathy A. Catterson, Clerk
U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

RK L. WHITCOMBE; et al.,	No. 06-16488
Plaintiffs - Appellants,	D.C. No. CV - 06-00374 - ROS
RRY HENAK, Husband; et al.,	MEMORANDUM
Defendants - Appellees.	

Appeal from the United States District Court
For the District of Arizona
Roslyn O. Silver, District Judge, Presiding

Submitted July 9, 2007**

ore: LEAVY, THOMAS, and BERZON, Circuit
ges.

his disposition is not appropriate for publication and
ot precedent except as provided by 9th Cir. R. 36-3.
This panel unanimously finds this case suitable for
ision without oral argument. See Fed. R. App. P.
a)(2).

Kirk and Susan Whitcombe appeal pro se the dismissal of their action seeking to set aside orders issues by Washington state courts in three cases arising out of a boundary dispute between the Whitcombe's and their neighbors, Larry and Susan Henak. We have jurisdiction pursuant to 28 U.S.C. * 1291. We affirm.

United States district courts lack authority to review final judgments of state courts acting judicially; such review may only be had in the United States Supreme Court. *See Dist. Of Columbia Court of Appeals v. Feldman*, 460 U.S. 462, 482 (1983). The *Rooker - Feldman* doctrine thuse bars cases such as the Whitcombes': "cases brought by state-court losers complaining of injuries caused by state-court judgments rendered before the district court proceedings commenced and inviting district court review and rejection of those judgments." *Exxon Mobil Corp. v. Saudi Basic Indus. Corp.*, 544 U.S. 280, 284 (2005). Dismissal was proper.

The district court also properly denied the Whitcombes' numerous motions seeking reconsideration, vacatur of the judgment, and leave to refile.

AFFIRMED.

FILED
AUG 24 2007
Cathy A. Catterson, Clerk
U.S.COURT OF APPEALS

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

KIRK L. WHITCOMBE; et al,	No. 06-16488
Plaintiffs-Appellants,	D.C. No. CV-06-0374-ROS
v.	District of Arizona Phoenix
LARRY HENAK, Husband; et al,	ORDER
Defendants - Appellees.	

Before: LEAVY, THOMAS, and BERZON, Circuit Judges.

The Panel has voted to deny the petition for panel rehearing.

The full court has been advised of the petition for rehearing en banc and no judges has requested a vote on whether to rehear the matter en banc. *See* Fed. R. App. P. 35.

The petition for panel rehearing and the petition for rehearing en banc are denied.

No further filings will be accepted in this closed case.

Kirk & Susan Whitcombe- Pro - Se's
3303 West Twain Court
Anthem, AZ 85086
(623) 551-3900 Home Phone and fax
Whitcombe@qwest.net email address.

FILED
April 11, 2006
(per court
docket sheet)

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF ARIZONA

Kirk & Susan Whitcombe Husband and Wife	) CASE NO. CV'06 0374 PHX) ROS)
Plaintiff's	) CIVIL RULE 60 MOTION) FOR RELIF FROM) JUDGMENT NOT) OPERATING - LACKING) SUBJECT MATTER &
Larry & Susan Henak, Husband and Wife	) PERSON MATTER) JURISDICTION -PROCURED) BY FRAUDS - SATISFIED) 1997 BY EXTORTIONS &
Defendant's	) FRAUD- CONSPIRACY) WITH INTENT TO) OBSTUCT DUE COURSE) OF JUSTICE 1997-2005 -) STATE OFFICIALS) ACTING WITH PRIVATE) INDIVIDUALS) IMPLICATED)
	) DECLARATION) ATTACHED

)
) REPORTING CRIMINAL
) ACTIVITES TO THE
) COURT,18 USC 4 & 18
) USC 2
)

1. JURISDICTION

1 Jurisdiction under Federal Civil Rule 60 to vacate a oid judgment is inherent.

2 A void judgment entered by a court which lacks risdiction over subject matter, or lacks inherent power enter the particular judgment, or an order procured fraud, can be attacked at any time, in any court, either rectly or collaterally, provided the party is properly fore the court. Long v. Shorebank Development orp., 182 F. 3rd 548 (C.A. 7 Ill. 1999). Emphasis added.

3 A void judgment is one which has no legal force or fect, invalidity of which may be asserted by any person hose rights are affected at any time and at any place rectly or collaterally. Reynolds v Volunteer State Life s. Co. Tex. Civ. App., 80 S.W. 2d 1087, 1092. Blacks aw Dictionary 6th Edition, p. 1574.

4 Where CR60 (b) (4) is properly invoked on the basis at the underlining judgment is void, "relief is not a scretionary matter, it is mandatory." Omer v Shala, 30 3d 1307, 1310 (10th Cir.1994) (quoting V.T.A., Inc. v. irco, Inc., 597 F. 2d 220, 224 n.8 (10th Cir. 1979)

5 14th Amendment Due Process and Equal Protection uarantees.

1.6 Federal rule CR 60 Relief from Judgment or Order. CR60(b)(4) Motion to Vacate Void Judgment, Federal Rule 60(b)(5) the judgment has been satisfied, released, or discharged, or prior judgment upon which it is based has been reversed or otherwise vacated, and CR60(b)(6) any other reason justifying relief from the operation of the judgment.

1.7 28 USC 1332 Diversity of citizenship; amount in controversy; costs. (a) The district courts shall have original jurisdiction of all civil actions where the mater in controversy exceeds the sum or value of $75,000, exclusive of interests and costs, and is between (1) citizens of different States

1.8 28 USC 1331, the district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States.

1.9 28 USC 1343 Civil rights and elective franchise (1),(2),(3)& (4).

1.10 42 USC 1981 Equal rights under color the law,

1.11 42 USC 1982 Property rights of citizens,

1.12 42 USC 1983 Civil action for deprivation of rights;

1.13 42 USC 1985 Conspiracy to interfere with civil rights, (2) Obstructing justice, (3) Depriving persons of rights and privileges.

1.14 5 U.S.C. 702 Right of review. "A person suffering legal wrong because of agency action, or adversely affected or aggrieved by agency within the meaning of a

elevant statute, is entitled to judicial review thereof."

11. VENUE

2.1 Venue to vacate a void judgment under Federal Rule 60 and as interpreted by cited case laws is any location where a Federal District Courts is located.

2.2 ["Where federally protected rights have been invaded, it has been the rule from the beginning that courts will be alert to adjust their remedies so as to grant the necessary relief" Bell v. Hood., 327 U.S. at 684 (footnote omitted); see Bemis Bros. Bag Co. v. United States, 289 U.S. 28, 36 (1933) (Cardozo, J.); The Western Maid, 257 U.S. 419 (1922) (Holmes, J.)]" Bivens v Six Unknown Named Agents of the Federal Bureau of Narcotics 403 U.S. 388 (1971).

111. RELIEF REQUESTED

3.1 Plaintiff's Kirk and Susan Whitcombe, husband and wife move the above - entitled Court for entry of order Vacating the Henak v Whitcombe judgment No. 95-2-02783-1SEA, entered against Whitcombe's by Washington State King County Superior Court on September 20, 1996, Ex. 17, staying enforcement of four judgments based on the Henak v Whitcombe judgment Ex's 31, 62, 67 and 75, until the motion can be heard, and for further relief as follows;

3.2 Pursuant to Federal Rule 60(b) (4) the judgment is void;

3.2.1. For entry to Show cause directing Defendants to appear in response to this Motion; and setting reasonable return date and other hearing or trial dates as

shall be deemed appropriate for the purpose of considering the issues raised by this Motion.
3.2.2. For recovery of the Henak v Whitcombe judgment Ex.17, in Henaks favor against Whitcombe's, for all sums paid to Henaks in satisfaction of King County Superior Courts earlier judgment, entered September 20, 1996, plus statutory interests, or for other appropriate Order of restitution to Whitcombes for monies paid to Henaks pursuant to said judgment.

3.3 Pursuant **to Federal Rule 60(b)(5) the judgment has been satisfied, released, or discharged, or prior judgment upon which it is based has been reversed or otherwise vacated**, for entry of order vacating the four Judgments rendered based upon the Henak v Whitcombe judgment; (1) CR60(b)(4) & (11) Motion - Filed 11/5/99, dismissed 1/3/00, as Res Adjudicate and frivolous, additional sanctions, Ex. 31, (2) CR60(b)(4)(5)(11)(c)(e)(1)(2) Motion - Filed 8/23/02, dismissed 2/20/2003 *nunc pro tunc* to January 3, 2003, as Res Adjudicate and frivolous, additional sanctions, Ex. 67, (3) State Court of Appeals Unpublished Opinion No. 52005-9-1 Consolidated w/ No. 52170-5-1, decided 5/10/04, placing additional sanctions. Ex. 75 (4) Whitcombe v Washington State, filed 2/13/01, dismissed Nov. 1, 2002 because "The courts lack subject matter jurisdiction and Plaintiff's have failed to state a claim" with prejudice and sanctions. Ex. 62.

> "To punish a person because he has done what the law plainly allows him to do is a due process violation of the most basic sort." Bordenkircher v Hayes, 434 U.S. 357, 363 (1978) (quoted in BMW at 517 U.S. at 573 n.19)

3.4 Pursuant to CR60 (b) (6) for any other reason justifying relief from the operation of the judgment; 3.4.1 Pursuant to State of Washington Rule 60 RELIEF FROM JUDGMENT OR ORDER, Ex. 151, and RCW 4.72 VACATION AND MODIFICATION OF JUDGMENTS, Ex. 101; for entry to provide order for a new civil trial in the Henak v Whitcombe case with a leave to amend to add new causes of action and parties with court appointed counsel as federal and state case law provides in situations as stated in Whitcombe's pleadings in State court Whitcombe v Washington State, but denied, Ex. 53 & 56, pp. 4-6. Relevant State Case law supporting new trial is cited in Whitcombe's 2nd CR60 Motion, Ex. 57, p.12.

3.4.2 Pursuant to 18 USC 4 Misprision of felony and 18 USC 2 Principals, (Aiding and Abetting/ Accessory in the commission of crimes), for entry of order to appoint special prosecutor to investigate Whitcombe's allegations of witnessing criminal actions identified in this instant Motion by certain State and local county officials in conjunction with Henaks and other private sectors acting under color of, but in violation of state laws committing;

FRAUDS - 18 USC 1001 Chapter 47 - Fraud and False Statements, 18 USC 1028 Fraud and related activity in connection with identification documents and information.

EXTORTION - pursuant to 18 USC 1951 Interference with commerce by threats or violence (2) and pursuant to Extortion - 18 USC 880 Receiving the proceeds of extortion.

CONSPIRACY - pursuant to 18 USC 241 Conspiracy against rights, by State and local county Officials and agencies acting in conjunction with Henaks and other named private sectors, "acting under color of, but in violation of State laws", defending the Henak v Whitcombe judgment, depriving Whitcombes of their Rights pursuant to 18 USC 242 Deprivation of rights under color of law.

IV MEMORANDUM

4.7.1 Federal case law supporting vacating void judgment is found cited in JURISDICTON, 1.1, 1.2, 1.3, 1.4.

4.7.2 Res ajudicata consequences will not be applied to a void judgment which is one which, from its inception, is a complete nullity and without legal affect. Allcock v. Allcock, 437 N,E, 2d 392 (ILL App 3 Dist. 1982). See also State Supreme Court - Docket # 76480-8, filed 03/09/2006, Ex. 86

4.7.3 Pursuant to State of Washington CR60 (b) (5) Vacating void judgment, "The court has a nondiscretionary duty to grant relief when a judgment is void, Re Mayfield, 47 Wash. App 699 (1987)."

4.7.4 Washington State CR60(b)(4) Fraud, expressly provides for the re-opening and vacations of judgments which are, in any material manner, based upon fraud, misrepresentation or other misconduct of an adverse party, Seals v. Seals 22 Wash. App. 652 590 P.2d 1301, (1979). In such instances, a concrete showing of all of the nine elements of common law fraud is unnecessary.

7.5 Pursuant to the policy enunciated in RCW 4.72.080, new trial should be proper in the administration of due ourse of justice in the Henak v Whitcombe case in a ifferent state away from Judges in Washington State.

V. CONCLUSION

Whitcombe's Rights were repeatedly violated by lenaks, Kitz, Misterek interaction in with State and ocal King County Officials and agencies acting under olor of, but in violation of State laws, in creating; false urvey practices, the false Henak v Whitcombe case and udgment, obtaining Whitcombe's land and money by raud and extortion, and conspiracy with intent to bstruct due course of justice in the Henak v Whitcombe ase from 1995 - 2006. Accordingly, Whitcombe's notion this Honorable court for the 111. RELIEF EQUESTED in this Motion.

DATED this 10th day of April 2006

/_____ s/_____

Kirk L Whitcombe - Pro se Susan L Whitcombe - Pro se

Kirk & Susan Whitcombe- Pro - Se's
3303 West Twain Court
Anthem, AZ 85086
(623) 551-3900 Home Phone and fax
Whitcombe@qwest.net email address.

FILED
April 11, 2006
(per court
docket sheet)

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF ARIZONA

Kirk & Susan Whitcombe)	CASE NO. CV'06 0374 PHX
Husband and Wife)	ROS
)	
)	KIRK WHITCOMBES'
)	DECLARATION IN
Plaintiff's)	SUPPORT OF FEDERAL
)	RULE 60 (b) (4)(5) & (6)
)	MOTIONS FOR RELIEF.
Larry & Susan Henak,)	
Husband and Wife)	
)	
Defendant's)	
_____)	

Declarant, Kirk Whitcombe, states as follows under penalty of perjury under laws of the United States, State of Arizona and State of Washington.

1. I, Kirk Whitcombe am one of the Plaintiff's in the above entitled action. I am of legal age, competent to testify concerning the following and declare the following based upon my personal knowledge. References are made herein to "we" or "us" or "our" is to Plaintiff's Kirk L and Susan L Whitcombe, husband and wife;

2. May 7, 1993, Washington State Department of Natural Recourses (DNR) issued us a Forest Practices Permit to conduct a tree farm business, designating North Bend Logging Inc., (NBL), our State Licensed Corporation, to build a permanent 1600", staked mapped, proposed maintenance road under contract with us on our six acres where we lived, and conducted NBL business in rural King County. Ex. 7. We also intended the road for our future home site. 1999 Declaration. Ex. 28.

3. September 20, 1996, King County Superior Court rendered a Henak v Whitcombe, 95-02783-1SEA, Judgment, claiming on its face of record to have located the common boundary line between Henaks and Whitcombe's, without consideration and disclosure of the affects the survey practices had on existing surveys in the area, recognizing, but ignoring, a 1979 King County approved Bennett Survey of Record No. 1278085, originally established those property boundary corners and common boundary lines. The judgment shows only where the surveyors staked their line crossed the road NBL was building. Ex. 17.

We were on our own land building the road, as the State permit provides. We did not trespass as determined by where the Short Plat originally established the common boundary line. Hancock Declar., Ex. 27, P.5, which fact of record is undisputed.

4. A 1997 King County Assessors Map, Ex. 18, shows where the 1979 Short Plat, "KCSP No. 1278085" located its common boundary line between Henaks and Whitcombe's. Henaks land parcel is the most westerly lot # 1, inside the Short Plat. Whitcombe's land parcel is adjacent and to the west, outside the Short Plat,

identified as "6.24 Ac." sharing the same common boundary line. **the Henak v Whitcombe judgment in contrast, on its face of record, lacks this needed disclosure ot operate.** and why it can not be recorded in public records. Ex. 17.

5. NBL, gainfully employing Kirk and Susan Whitcombe and others since 1988, not being able to finish its contractual services, was forced out of business.

6. We could not afford to pay for judgment imputed trespass. In fear of the judgment being enforced we satisfied the judgments contingencies and sold our land parcel to the same DNR agency that issues us a permit to build the road whereas the DNR officers acquired our land parcel and paid Henaks cash out of the proceeds in a Lis Pendens PAYOFF settlement action. Ex. 10.

7. When we sold our land to the state and relocated, we were forced to sell our land where the judgment staked the common boundary line on the ground by the three land surveyors because at the time we did not know the judgment could not operate, was legally ineffective, lacking subject matter and person jurisdiction, procured by fraud, and could not be recorded by the local county auditor pursuant to "RCW 65.04.070 Recording judgments affecting real property". Ex. 149. As revealed per current public land records; (1) April 12, 2005 certified copy of the Short Plat, Ex. 1, pursuant to "RCW 58.17.290 Certified copy as evidence." Ex. 141, (2) our 1997 Statutory Warranty Deed, conveying our land to the State, Ex. 19, (3) County Assessors 2000 tax rolls, based upon square footage, of our former land parcel, Ex. 47, Henaks land parcel, Ex. 48, the Short Plat, Henaks and Whitcombe land parcels remain unchanged by the

Henak v Whitcombe judgment, confirming State official acquired our land for the State as its boundaries were established prior to the judgment, which extra amount of land is determined by Hancock Declaration and survey to be 1/3 of an acre more than judgment allowed us to sell it, Ex. 27.

8. In doing so the state obtained the area of judgment imputed trespass included as our land parcel, not Henaks, because the judgment could not operate to affect current public land records. Henaks have filed no objections. In other words, the very land we thought we owned and, in law did rightfully own, we sold to the State and gave our money to Henaks to satisfy the State's false judgment against us through a Lis Pendens action, Ex. 10, "under color of State law". We allege this settlement action by federal legal definition is criminal Fraud and Extortion as stated in our 111 RELEIF REQUESTED, also violates Chapter 19.86 RCW Unfair Business Practices - Consumer Protection Laws, Ex. 114 and other laws.

9. The judgment has not operated, is legally ineffective since its inception, is false and void. This is confirmed pursuant to "RCW 58.17.290 Copy of plat as evidence." Ex. 141, as disclosed by April 12, 2005 certified copy of the 1979 Bennett Short Plat, as evidence, Ex. 1, showing no affects of the 1996 judgments, being recorded with the King County Auditor, June 1, 2004, eight years after it was rendered, claiming to have located the Short Plat's NW and SW property boundary corners and common boundary line. Ex. 17.

10. Henaks never paid taxes on the disputed land, before or after the judgment as required by state laws, Chapter

7.28, RCW, Ex's. 105-110. Henaks and their attorney knew the judgment was not operating, at the time they accepted our money to satisfy the judgment, in part because they "mysteriously" had not requested the local county auditor to perform its duties required by law to execute the judgment pursuant to "RCW 65.04.070" Ex. 149, until June 1, 2004, as shown on the face of the judgment. Ex. 17.

11. It is now much too late for Henaks to have their judgment operate for them even if it could operate after being recorded, which it has not as confirmed by April 12, 2005 certified copy of the Short Plat, Ex. 1. Pursuant to KC 19.08.112 boundary line adjustments (c) and KC 19.08.113 Boundary line corrections (c) allow only one year to be recorded that are approved by the county. Ex. 113.

12 **THE COURTS LACK SUBJECT AND PERSON MATTER JURISDICTION** to take first time applications for boundary line adjustments and corrections between land owners who had not first applied for by local counties where the land parcels are situated. Courts only have jurisdiction to review such executive branch decisions.

Pursuant to "RCW 58.17.030 Subdivisions to comply with chapter, local regulations" Ex. 136, (emphasis added), local regulation KING COUNTY GENERAL RULES OF ACCEPTABILITY, "KC 19.08.112 adjusting boundary line" and "KC 19.08.113 boundary line corrections", Ex. 113, does. State case law shows courts not procured and tricked by deceptive frauds will not intervene. Cited case law in our 2nd State CR60 Motion to Vacate Judgment, Ex. 57, p. 5.

13. THE JUDGMENT IS PROCURED BY MULTIPLE FRAUDS; Henaks, Henaks surveyor, Henaks attorney, and local King County and State Officials, agencies are involved in, the reason the judgment has not operated since its 1996 inception as per decree, but operating instead as an instrument of fraud and extortion for the sole benefit of Henaks and State of Washington at the wholesale cost of our Rights secured by the Constitution and laws.

13.1 Henaks land surveyors, Mr. Kitz fraudulently procured advice in 1989 from the Federal Bureau of Land Management (BLM), on how to accurately locate and establish property boundary corners and common boundary lines of existing Surveys of Record, Ex. 3, by inquiring how to accurately resurvey and retrace subdivisions of 640 acre Federal sections of land, Ex. 2, ignoring the written cautions in that advice Ex. 3, to consider existing surveys in the BLM advised survey practices. This fact is stated in the BLM's own words in their Jan. 16, 2001 letter to Mr. Kitz, Ex. 39 and reflects so in in Kitz's Record of Survey. Ex. 8.

13.2 Mr. Kitz also used his procured 1989 BLM advice incorrectly in his survey practices for Henaks by only doing a partial resurvey, which misrepresented the Short Plat and Henaks most westerly lot within to be smaller than their legal descriptions, when in fact if Mr. Kitz would have performed his survey practices following 1989 BLM advice correctly, he would have caused just the opposite, reducing and relocating the Short Plat and all of it's inner lots, including Henaks lot # 1, in truth, undermining the very purpose of the Henak v Whitcombe lawsuit and reason for it to even

exist. Hancock Declaration, Ex. 27, p.3, 1st CR60 Motion to Vacate Judgment, Ex. 28.

13.3 The judgment is procured by fraud practiced in the trial court by Henaks attorney, Mr. Misterek who created a false 1995 quitclaim deed that states, without disclosure, the Short Plat and Henaks inner lot one are smaller than the area included their legal descriptions., Ex. 9, and are therefore entitled to more "unspecified" land as per judgment unrecorded common boundary line location between Henaks and Whitcombes. At Mr. Mistereks request, the King County Auditor recorded this instrument in violation of "RCW 58.17.190 Approval of plat required before filing --Procedure when unapproved plat filed", Ex. 138, and Mr. Misterek then submitted this to the county auditor approved and recorded instrument as prima facie evidence to the trial court, which was instrumental in procuring the judgment against us.

13.4 The Judgment, is falsely procured by relying on four Record of Surveys, Ex's 6- Chicklero, 8 - Kitz, 11 - Chicklero Amended, and 15 - Hancock, that on their faces of record are falsely certified by the three land surveyors and the local county auditor as Record of Surveys on their faces pursuant to "RCW 58.09.080 Certificates -- Required -- Forms", Ex. 130.

In particular, none of the surveyors survey practices as reflected in the Record of Surveys on their faces conform with "RCW 58.09.040 Records of survey == Contents -- Filing -- Replacing corner, filing record", Ex. 127. This part of the Survey Recording Act, Public Disclosure Law, requires surveyors in their survey map intended for public use mandatory disclose the affects their

survey practices have on existing surveys to show what they are doing is not violating existing laws regarding surveys, subdivisions, platting, boundaries, the Survey Recording Act supplements, "RCW 58.09.010 Purpose – Short Title", Ex. 124. This concept and purpose supports the same Citizens Bona Fide Property Rights concerns as Federal 43 USC 772 Ex. 156, and BLM with supporting state case law,

> "A government resurvey can not disturb title which parties have acquired up to the time it is made." Bently v Jenne, Wyo. 1925, 236 P. 509, 33 Wyo 1. "140413 43 USCA 772.

The State Attorney General "in writing" fully supports the Survey Recording Act, Public Disclosure Law, AGO 1971, No. 26, Ex. 153, and pursuant to RCW 43.10.030(5), Ex. 123, and Ex. 152, has created AGLO 1980, No. 31 and AGO 1989, No. 1, Ex's 154 & 155, for legal direction specifically for government officials and agencies having a statutory duty to execute RCW 58.09.040, Ex. 127

Because the judgment and survey practices on their faces of record do not comply with RCW 58.09.040 as required by state law, they also do not comply with other state laws of the Survey Recording Act; Ex's 124-132, RCW 58.09.010, 030, 050, 060, 080, 110, 140, nor do the judgment and survey practices comply with other existing laws regarding surveys, subdivisions, platting, boundaries, the Recording Act, supplements pursuant to RCW 58.09.101 Purpose - Short Title; Ex. 124, Chapter 58.17 RCW - Ex's 133-142, Chapter 58.24 - Ex's 143-145, Chapter 65.04 RCW - Ex's 146-149, Chapter 332.130 WAC - Ex's 115-120.

All of these state laws the judgment and survey practices relied upon are in direct violation of. Without the Survey Recording Act, Public Disclosure Law being executed exposing the affects of land surveyors survey practices on existing surveys, allegedly violating Citizens Bona Fide Property Rights, there is no way to confirm this. And this is not just the judgment, rather most likely state wide regulated survey practices the judgment is enforcing.

13.5 The State Board of Registration for Professional Engineers and Land Surveyors has negligently and falsely approved of Mr. Kitz's survey practices in two adjudicative proceedings pursuant to "RCW 58.09.140 Noncompliance grounds for revocation of land surveyor's license", Ex. 132. One proceeding was before the judgment, 1995-1996, Ex's 12, 13, 14 & 16 and one was after the judgment in 1999-2000, Ex's 30, 32, 33, 34, with both conclusions approving and commending Mr. Kitz for obtaining BLM advice, accurately following it and promoting other land surveyors to follow, Ex. 4 & 5.

14. Pursuant to "RCW 5.44.070 Certified copies of instruments" Ex. 104, all courts involved in this case accepted the four Record of Surveys as "prima facie" evidence under "State Due Process of Law". Our fate and State falsely approved survey practices has been sealed "under color of, but in violation of State Laws".

15. CONSPIRACY After the judgment was satisfied by Henaks and State officials to their best interests, Henaks, Kitz, Transnation Title Insurance Co., Misterek, State and local county officers, agencies representing the State of Washington's and Henaks best interests; impeded, hindered, obstructed, and defeated due course of justice

in the Henak v Whitcombe case 1998-2006 in alleged acts of Conspiracy.

15.1 This conspiracy action started after Mr. Misterek under Henaks direction, successfully practiced fraud in the trial court, obtaining a judgment in his clients, Henaks favor, practices fraud again in the court of Appeals for Henaks in support of the fraud he practiced in the trial court as explained in our State CR60 Motion REPLY TO RESPONSE, Ex. 29, falsely procuring the Court of Appeals April 27, 1998 Unpublished Opinion, No. 39547-5-1, as disclosed in Ex. 22, pp. 6 & 7.

15.2 October 1999, we discovered Mr. Kitz used 1989 BLM advice incorrectly in his survey practices misrepresenting the actual legal size of the Short Plat and Henaks most westerly inner lot within, that if implemented correctly would have reduced the Short Plat and its inner lots in size and relocated them, denying the purpose for the Henak v Whitcombe case. Ex. 27, 5. D, p.3. When we produced this evidence to King County Superior Court in our 1st CR60 Motion to Vacate the judgment, Ex. 28, the judges assigned to the case, not the original pro-tem judge who heard and tires the case in 1996, which we asked for, dismissed the action; Res Adjudicate, "frivolous", placing additional sanctions on us, 1/3/2000, Ex. 31.

In defense to support the judgment is legal, Mr. Misterek conceals he and Henaks knew the Judgment was not operating, yet was satisfied by Henaks and State officials. Mr. Kitz was also notified by the BLM in August of 1999 his survey practices were fraudulently procured from the BLM, violating Citizens Bona Fide Property Rights. BLM's later January 16, 2001 letter.

15.3 We produced the same facts and supporting information in our 2nd complaint of Mr. Kitz's same survey practices to the State Board of Registration for Professional Engineers and Land Surveyors on November 11, 1999, Ex. 30. In response to their information and Mr. Kitz's response, Ex. 32, the Board adjudicated and dismissed the complaint, Ex. 33 & 34 commending Kitz for having procured BLM advice and accurately following, as the Board did in its 1995 investigation, again violating it's statutory duties pursuant to RCW 58.09.140, obstructing our due course of justice and promoting false survey practices that is allegedly violating Citizens Rights in the process.

15.4 January 0f 2001 we discovered Mr. Kitz falsely certified his survey practices conform with the requirements of the Survey Recording Act on the face of his survey map pursuant to RCW 58.09.080, Ex. 130. We filed our third complaint with the Board about Mr. Kitz's same survey practices, January 5, 2000, informing the Board and other Agencies and officers, including the BLM as indicated on the bottom of page 3, Ex. 36, the Board acknowledged receiving the complaint, Ex. 37. The BLM immediately responded with its January 16, 2001 letter, Ex. 39. The Board refused to conduct and investigation, dismissing our request. Ex. 40.

15.5 Feb. 13, 2001 we filed our Okanogan Superior Court "PETITION FOR REVIEW OF STATE AGENCY" Ex. 42, and later, January 16, 2002 after additional discovery, our AMENDED PETITION, Ex. 52 because King County Risk Management and Prosecutor would not perform their statutory duties requiring the County Auditor

perform its statutory duties in executing the Survey Recording Act, all past and present actions brought pursuant to,

> "RCW 34.05.570 Judicial Review (4) Review of other agency action (b) A person whose rights are violated by and agency's failure to perform a duty that is required by law to be performed may file a petition for review pursuant to RCW 34.05.514 seeking and order pursuant to this subsection requiring performance." Ex. 121.

PLUS we made allegations the State Attorney General is representing and defending it's inferior high ranking officers and agencies delinquent interests instead of the AG performing its statutory duties pursuant to RCW 43.10.030. (2) Ex. 123, requiring the delinquents perform their statutory duties required by law to be performed.

The case was dismissed after many of our motions were denied on the AG proposal with prejudice and sanctions by Okanogan Superior Court Nov. 1, 2002, on grounds, "The courts lack subject matter jurisdiction and Plaintiff's have failed to state a claim." , Ex. 62, without explanation. The Legislature can't make a law requiring the Judicial Branch render an Order requiring the statutory duties of the Executive Branch be performed ? Plaintiff's claim their Bona Fide Property are being violated is not a right secured by the Constitution and laws ? We filed our appeal 11/28/2002. Ex. 63. Designated Clerks Papers missing.

Judge never reviewed file before rendering decision. Appeal delayed because of government false document, all explained. Ex. 73. The Court of Appeales, Div. 111,

January 25, 2005, Case No. 21637-3 Unpublished Opinion, Ex. 80, confirmed the trial court, denying our Motion for Reconsideration, Ex. 81, April 1, 2005. Ex. 84.

15.6 May 2, 2002, one year after we discovered Mr. Kitz falsely certified his survey map as a Record of Survey, fraudulently procured BLM advice, allegedly procuring the Henak v Whitcombe judgment with fraud, we filed the Whitcombe v Kitz case, Cause No. 02-2-074111-1SEA, Ex. 54. The case was dismissed with prejudice and sanctions for being beyond the three year statute of limitations "Defendants claims if any survive this ruling". Ex. 64.

15.7 August 23, 2002 we filed our second CR60 Motion For relief from the Henak v Whitcombe judgment, alleging the judgment has not operated since its inception, lacks subject matter jurisdiction, and is procured by fraud based upon our discoveries in 2001, Ex. 57, Under protest, the Chief Civil Judge heard and tried our motion after we had already arranged for the original Pro-Tem judge to hear and try the Motion. Ex. 69. The case was heard and tried anyway by the Chief Civil Judge who dismissed the case February 20, Nunc Pro Tunc to January 3, 2003 as being Res Adjudicate, frivolous, placing additional sanctions on us. Ex. 67. The Court of Appeals Div. 1 consolidated our 2nd Motion to Vacate Judgment with the Whitcombe v Kitz case whereas the Court of Appeals confirmed both lower court decisions May 19, 2004, Unpublished Opinion placing additional sanctions on us. Ex. 75.

We filed a Petition for Discretionary Review, Ex. 76. The State Supreme Court rendered and Order March 1, 2005 "Petition for Review is Denied", Ex. 82, knowingly,

as of record, leaving the Henak v Whitcombe judgment void and without finality, operating as a fraud and extortion in law.

15.8 There are many more government agencies and officers we corresponded with having a statutory duty to protect our rights secured by the Constitution, but they all refused. They are identified with their written correspondences in Ex. 85.

DATED this 10th day of April 2006

s/_____ s_____
Kirk L Whitcombe Susan L Whitcombe